

Expert Evidence by Psychologists: Sometimes Problematic and Often Premature

John C. Yuille, Ph.D.

This article provides a critical review of two major types of expert evidence: (a) clinical assessments, and (b) generalizations drawn from psychological research. Strong arguments both for and against both types of testimony have been offered by legal experts and psychologists. These arguments are evaluated and the conclusion is drawn that there are two fundamental problems for psychologists in the role of expert. First, the types of assessments clinicians are asked to make (e.g., concerning the accused's mental state at the time of committing the offense) may exceed the capacity of the discipline; such assessments are problematic. Second, the research foundation that psychologists employ in court does not always apply to the court situation in the way experts imply; the application of laboratory research findings to real world contexts is sometimes premature. The article concludes with an admonition that psychologists should adopt a more conservative response to requests to provide expert evidence.

Psychologists frequently appear in the role of expert in North American courts. Defense attorneys and prosecutors call psychologists to provide expert testimony on two major types of evidence: (a) *clinical evidence* with testimony concerning the results of some type of clinical assessment (e.g., an assessment of an accused in a criminal trial or of a family for family court); and (b) *research evidence* with testimony derived from social science research from which generalizations are drawn for the court (e.g., issues related to eyewitness testimony). The extent

John C. Yuille, Ph.D., is professor of psychology at the University of British Columbia. Please address correspondence and reprint requests to Dr. Yuille at the Department of Psychology, University of British Columbia, Vancouver, BC V6T 1Y7 Canada.

to which this type of testimony is led in court is reflected by a recent report (Faust & Ziskin, 1988) that indicated that clinicians (psychologists and psychiatrists) are called upon to provide evidence concerning assessments of accused in 1 million cases per year in the United States. The present article provides a critical review of the types of testimony psychologists provide and examines the debates concerning the legal and ethical appropriateness of such testimony.

TYPES OF EXPERT EVIDENCE

Clinical Assessments

The most common type of evidence a psychologist will be asked to provide to a court is the result of some type of clinical assessment. The content of the assessment can vary considerably and includes assessment of the mental status of an accused, examination of the dynamics of a family, or an inference regarding the extent and nature of neurological damage. Mental status assessments may be offered in court for several reasons, for example, to determine the fitness of an accused to stand trial, or to assist in the evaluation of an insanity plea. Note that these two types of assessment are quite different. In the fitness assessment, the psychologist is called upon to determine the *current* mental status of the accused; with an insanity plea, the psychologist must infer the mental status of the accused at the time of the offense. Experts are also called upon to make projections into the future: A clinician can be asked to predict the future behavior, particularly the dangerousness, of an individual.

Clinicians, with appropriate training and experience, provide assessment evidence. Both psychologists and psychiatrists give this evidence and have done so for decades. It should be noted that until recently psychiatrists were much more likely to be called as experts in this domain, although the role of psychologists in this regard has been rapidly increasing in the past few years. However, there remains a perception in the courts that psychiatrists are preferable clinical experts to psychologists (e.g., Bank & Poythress, 1982; Dix & Poythress, 1981; Perlin, 1977).

Clinical assessments of a different type can be required by family courts or a court concerned with custody of or access to children. In such cases, a psychologist with expertise in family relations can be asked to evaluate the family in order to aid the court in determining who should have custody of the children and what access should be permitted for the noncustodial parent. The difficulties associated with providing this type of evidence are reflected in the fact that one Canadian provincial organization (the British Columbia Psychological Association) has reported that the greatest number of ethical complaints against psychologists occur in the context of child custody and access assessments.

Research-Based Expert Evidence

Although this type is much less common than expert evidence based on clinical assessments, psychologists also are asked to provide the court with information

derived from research findings. The general purpose of this evidence is to provide a summary of research results that bear on an issue or set of issues before the court. The type of evidence that is led is as varied as the discipline of psychology itself. Three general areas are provided below as examples.

The Effects of Violence and Abuse

Domestic Violence. Psychologists have been presented to the court as experts on the consequences of physical and sexual abuse. For example, rapid growth has occurred in our knowledge about both the causes and consequences of domestic violence, particularly spousal abuse (cf. Dutton, 1988). Prosecutors have attempted to enter such evidence to assist the court in determining the sentence of someone convicted of such violence. Also, the victims of domestic violence sometimes murder their abusers (cf. Browne, 1987). Defense attorneys in such cases frequently call upon psychologists to provide evidence of the psychological justifications for the victim of abuse responding with violence; these include insanity (e.g., Jones, 1980), and self-defense, particularly as a consequence of the *battered woman syndrome*. The battered woman syndrome has been proposed as one consequence of repeated abuse (Martin, 1977; Walker, 1984), and it has been offered as an explanation for an abused woman's violence against her abuser (Hudsmith, 1987). This type of defense has received some critical attention (Browne, 1987; Schneider, 1986).

Sexual Assault. In 1974, Burgess and Holmstrom described a set of physical, psychological, and behavioral symptoms that can be found in adult victims of sexual assault; they labeled this symptom constellation the *rape trauma syndrome*. Since the appearance of that article the courts have been asked to admit testimony about the syndrome. The testimony typically involves the presentation of the characteristics of the syndrome and an opinion on the relationship of the particular victim's behavior to that syndrome. (For a general discussion of this type of evidence see Frazier & Borgida, 1988.)

Child Sexual Abuse. During the past few years we have become aware that sexual abuse occurs to between 5 and 10% of children in Canada and the U.S. (e.g., Badgely, 1984; Finkelhor, 1979, 1986). Our increased awareness of the extent of this type of child abuse has led to a climate that encourages children to report their abuse. Providing children with support has led to a variety of new problems for social service and law enforcement agencies; these include developing better techniques for interviewing and assessing children (e.g., Yuille, 1988), and evaluating the special needs of children in the court context (e.g., Bulkley, 1988). The type of expert evidence that lawyers attempt to lead in child sexual abuse cases is variable. (For a detailed review see Serrato, 1988.) An expert may be tendered to instruct the court about general or specific aspects of child abuse, for example, the factors that influence disclosure of the abuse, or the short-and long-term consequences of abuse. Alternatively, the expert might be asked to render an opinion on the credibility of the child's allegations. The latter type of testimony has been widely accepted in family and civil court but has

been problematic for criminal courts. The problems associated with such testimony are reviewed later in the article.

Eyewitness Testimony

Psychologists have concentrated more research effort on the study of eyewitness memory than any other issue bearing on psychology and the law (Saks, 1986). Although this research began at the turn of the century (Munsterberg, 1908), there was a hiatus from the 1910s until the research was renewed in the 1970s (Buckhout, 1974; Loftus, 1979). The subsequent tremendous volume of research publications led to the appearance of psychologists in court to offer expert testimony concerning the factors that influence the accuracy and detail of eyewitness memory. There has been a heated debate within the legal profession about the value and appropriateness of this type of testimony (e.g., Devlin, 1986; Murphy, 1987), and psychologists have had an internal debate of their own about the ethics of this testimony (e.g., Loftus, 1986; McCloskey & Egeth, 1983).

Other Types of Expert Evidence

The areas reviewed to this point represent the major types of expert evidence that psychologists are asked to provide. However, there are a variety of other research-based topics about which psychologists are occasionally called to provide evidence. These areas include:

1. Issues related to perception. For example, a researcher may measure the amount of ambient light in an eyewitness situation; or he or she may provide a comparison of the perceptual similarity of two different company logos for a civil case.
2. Research concerning the effects of television on violent behavior.
3. Research concerning the effects of pornography on sexual behavior.
4. The effect of pretrial publicity on juror decision making. It should be noted that lawyers also consult psychologists concerning jury selection (e.g., Penrod & Cutler, 1987).
5. In some states, limited evidence concerning the outcome of polygraph tests. This type of evidence is prohibited in both Canada and the United Kingdom.

In summary, the types of expert evidence that psychologists are asked to present are varied and range across most of the topics that psychologists study. However, expert psychological evidence has not been greeted with uniform enthusiasm; in fact, there have been continuous arguments about the legal value and about the ethics and appropriateness of such testimony. The next section of this paper critically evaluates those arguments.

ARGUMENTS FOR AND AGAINST EXPERT EVIDENCE

The remainder of this article focuses on three areas of expert testimony: evidence concerning eyewitness testimony; evidence about child sexual abuse;

and evidence based upon clinical assessments. These three examples were selected because they constitute the principal areas of expert testimony (or at least attempts to enter testimony) by psychologists, and the focus of much debate about psychologists as experts. Expert evidence concerning eyewitness testimony is examined with the focus on the appropriateness of extending eyewitness research to forensic contexts. Next, expert testimony concerning child sexual abuse is addressed with a focus on both the ecological validity of research and the appropriateness of a psychological assessment of the child's credibility. Finally, the reliability and the validity of expert psychological evidence are assessed in the context of testimony based upon clinical evaluations.

Eyewitness Testimony

Legal Arguments Concerning Admissibility of Expert Psychological Evidence

Psychology developed as a separate discipline during the last half of the nineteenth century; the date usually assigned to the birth of psychology is 1879, the year Wilhelm Wundt established a psychology laboratory at the University of Leipzig. Within two decades of that event psychologists were asked to provide expert evidence in court; the area of alleged expertise was eyewitness testimony. A Belgian lawyer hired a psychologist, Varendonck (cited in Munsterberg, 1980), to research the ability of children to provide evidence, and Varendonck testified at a murder trial in which children's uncorroborated evidence formed the core of the prosecution's case. Within a decade, eyewitness research had become very active and culminated in the appearance of a text in 1908 with the title *On the Witness Stand*. The author of this text, Hugo Munsterberg, advocated the active participation of psychologists in the courtroom. However, the leading American legal expert of the day wrote a scathing review of Munsterberg's book (Wigmore, 1908) and provided a number of criticisms of the psychologist's claim of the relevance of psychological research to the court. The basic criticism was that the psychologist's claim was premature.

The modern period of eyewitness research had a rapid rise in publications as soon as the topic reappeared, and there were soon calls for the presentation of the research results in court (e.g., Ellison & Buckhout, 1981; Loftus, 1979). These psychologists argued that the triers of fact should be made aware of the fallibility of eyewitness memory and the role of such factors as the effects of stress on witnesses, the problems associated with cross-racial identification, and the effects of postevent misinformation. However, the ghost of Wigmore still haunted the courts of Canada and the United States and considerable resistance was met in the attempts to introduce such testimony (see Loftus, 1986).

The legal arguments that have been offered against expert testimony on eyewitness evidence include the following:

1. Psychologists do not have special expertise concerning eyewitness behavior.
2. The evaluation of the testimony of a witness is in the province of the triers of fact and therefore not appropriate testimony from an expert.

3. The findings of eyewitness research have not "gained general acceptance in the particular field to which it belongs" (*Frye v. United States*, 1923). This is the Frye test that until recently has applied in U.S. courts to ensure that any admissible scientific evidence meets a standard of reliability and validity in science.
4. The findings of eyewitness researchers are common sense and there is no need for an expert to inform the court of the results.
5. An expert may have undue influence on a jury, which may result in too much focus on the issues raised by the expert testimony.

In a number of cases in both Canada and the United States some combination of the above objections has been raised by prosecutors. (It is usually the defense that wishes to lead the expert evidence.) In Canada, such expert evidence continues to be excluded by the judiciary. (*Regina v. Audy* is usually cited to support the exclusion.) In the United Kingdom, a commission of enquiry (Devlin, 1976) decided that psychologists had little information to offer the courts about eyewitness abilities, and therefore expert testimony continues to be excluded. However, in the United States the situation is quite different.

Several appeal court decisions in the United States (for a review, see Loftus, 1986) reversed the trend of excluding expert testimony about eyewitnesses, and such evidence has now been admitted in several states. A number of legal papers have appeared in the past few years that have attempted to refute the arguments against the admissibility of psychological expert testimony (e.g., Addison, 1977; Katz & Reid, 1977; Murphy, 1987; Woocher, 1977). These papers generally refer to the results of psychological research to refute the legal arguments. For example, Addison (1977) stated:

The heavy reliance of jurors on eyewitness testimony indicates their misconception of perception, and, in this sense, the factors of unreliability are not within the awareness of the layman. The perception expert could, therefore, provide valuable information from a sophisticated and complex scientific field that would undoubtedly assist the trier of fact in the search for truth. (p. 478).

Psychologists joined the battle against the exclusion of expert testimony by conducting research on the validity of several of the grounds for exclusion (cf. Loftus & Monahan, 1980). For example, the assertion that the results from eyewitness studies are simply common sense has been challenged in several studies (e.g., Deffenbacher & Loftus, 1982; Yarmey & Jones, 1983). Yarmey and Jones (1983) sampled the opinions of various groups concerning their knowledge of the factors affecting eyewitnesses. Those sampled included "experts," legal professionals, law students, students, and citizens. The fascinating aspect of this and other similar studies is that the answers to the questions were only considered correct if they agreed with the results of psychological research, and, not surprisingly, only psychologists were found to have "correct" knowledge.

Psychologists have also investigated the assumption that the expert may have undue influence on the trier of fact (e.g., Hosch, Beck, & McIntyre, 1980; Loftus, 1980; Wells, Lindsay, & Tausignant, 1980). These studies have involved presenting mock jurors with selected portions of the evidence from a criminal trial. In addition, some of the "jurors" receive a summary of expert evidence concerning the weaknesses of eyewitness testimony. Such research typically concluded that jurors are not unduly influenced by the expert evidence.

In summary, in the United States the legal opinion is divided about the value of expert evidence on eyewitness testimony but case law has been moving in the direction of admitting such evidence. In Canada, the courts have been consistent in rejecting such testimony.

Psychological Arguments Concerning Expert Evidence

Just as the U.S. courts were beginning to encourage psychologists to testify about the findings of their eyewitness research, some U.S. psychologists began to question the value of such evidence. The debate was opened by a strong attack against such expert evidence by McCloskey and Eggeth (1983). They suggested that the conclusions some psychologists have drawn about the negative effects of stress on eyewitness performance, or the problems associated with cross-racial eyewitness identification, or the existence of weapon focus are based on weak experimental foundations and, at best, are probabilistic in nature. For example, they concluded:

Testimony that asserts as fact effects that have not been demonstrated (e.g., effects of stress or weapon focus) is clearly inappropriate (and in any event there is no reason to believe that the introduction of undocumented assertions would improve juror performance); testimony limited to documented phenomena, however, may tell jurors little that they don't already know. (p. 558)

In effect, these psychologists were supporting some of the concerns previously raised by members of the legal profession. Loftus (1983) offered a spirited defense of expert testimony on the grounds that innocent people have been sent to jail on the basis of mistaken eyewitness information and that members of the legal profession have told her that eyewitness research offers a "beacon of hope." However, she did not, indeed, could not, provide an empirical basis to refute McCloskey and Eggeth (1983).

This debate led to a conference that culminated in a series of papers in a special issue of *Law and Human Behavior*, published in 1986 (Vol. 10, No. 3). Loftus (1986) repeated her concern about wrongful conviction and was supported in this concern by Wells (1986). Konecni and Ebbesen (1986) joined the opposing side of the debate with two arguments: First, the emphasis on eyewitness identifications is disproportionate to their actual occurrence in the criminal justice system (see also Undeutsch, in press); for example, they estimated "that in the State of California one person is wrongfully convicted approximately every 3

years because of mistaken eyewitness testimony" (p. 119). Second, the eyewitness research results lack ecological validity. This second point is the most telling criticism. Until recently not one of the studies in the eyewitness area had examined the performance of actual witnesses. The research has typically examined the memory of undergraduates for a slide sequence, a videotaped event, or a staged, live event. It has been assumed that the results obtained in laboratory or simulated field studies can be generalized to the performance of actual witnesses to crime; yet other than giving their research the title of "eyewitness research" psychologists can offer no evidence to support this assumption. It is strange that a profession that prides itself on being primarily empirical would assert and defend an assumption without any research evidence to support it. Konecni and Ebbesen (1986) are clear about the consequences of the lack of an empirical foundation for generalizing experimental results to the forensic context:

- (a) The external-validity problems of the memory and perception research on which the expert psychological testimony on eyewitness issues is based are so glaring that this type of testimony, at the present time, does not pass the Frye test.
- (b) These external-validity problems seem sufficiently important that they should give the would-be experts on these matters serious pause-on both ethical and scientific grounds-in deciding whether or not to testify.

It is my opinion that these conclusions are wholly warranted. Psychologists should not have claimed that, for example, the Yerkes-Dodson law (an inverted U-shaped function relating arousal to performance and developed from studies of the maze behavior of rats exposed to electric shock) could be directly applied to eyewitness behavior without direct evidence that such an application was supported by empirical data. The other issues related to eyewitness testimony have similar limitations in generalization.

Recently, some research with actual witness of crimes has appeared (e.g., Cutshall & Yuille, in press; Yuille & Cutshall, 1986; Yuille & Kim, 1987). The results of this research suggest that some of the previous findings of "eyewitness research" may generalize to forensic contexts but others may not. An example of the latter is the discovery that under certain circumstances eyewitness memory may persist over years, not in keeping with the usual forgetting curve suggested by some experts (e.g., Loftus, 1979). These few studies with actual witnesses represent too weak a data base to draw firm conclusions from, but they do clearly represent the lack of empirical research to support claims of psychological knowledge about witnesses who observe or are victimized by crime.

Psychologists have created a problematic situation by prematurely entering the courtroom to claim knowledge that, at present, we simply do not have. The strongest feature of psychology as a social science is its capacity for critical thinking and its insistence that any conclusions must be firmly based in systematic observations. The eagerness to assist the legal profession to deal with problems of mistaken testimony and the conviction of the innocent has led to the abandonment

of the fundamental feature of scientific psychology. Psychologists should have waited until they had the appropriate data base before claiming to know something about eyewitnesses, and only as such information becomes available should they consider entering the court to testify about the behavior of witnesses.

There is one type of information about eyewitness testimony about which psychologists can currently offer expertise, and this is an evaluation of the fairness of a lineup. Lineup procedures represent what Wells (1978) has called system variables, aspects of the investigation procedure that can be modified by changing systemic approaches to the investigation. System variables stand in contrast to estimator variables, eyewitness characteristics that are beyond the control of the criminal justice system. Lineup fairness is affected by the number and nature of the foils and the instructions given to the witness before presentation of the lineup. It is possible to determine the fairness of a lineup by presenting a group of subjects with a photograph of the lineup together with a general description of the suspect. A fair lineup should result in roughly equal choices among all the alternatives, foils and suspect, in the lineup. Employing procedures developed to assess lineup choices (e.g., Wells & Lindsay, 1980), it is possible for a psychologist to obtain an empirical evaluation of the lineup. This evaluation can be of use to the court.

Child Sexual Abuse

The Child Witness

The tradition in British Common Law has been to view children's evidence with skepticism. Children were thought to confuse fantasy and reality, and their testimony was usually viewed as unreliable. During the past decade, psychological research has demonstrated the fallacy of this view of children as witnesses. Although much of this research has the same ecological validity problems associated with adult eyewitness research, the pattern of results from a variety of studies confirms that children can provide accurate evidence about complex events they have observed (e.g., Ceci, Toglia, & Ross, 1987; Melton, 1981; Quinn, 1988).

A number of studies have indicated that younger children are susceptible to suggestion (e.g., King & Yuille, 1987), although the extent of this susceptibility has been debated (e.g., Goodman & Hegelson, 1985). However, a recent review of procedures that prosecutors and defense lawyers can employ when examining and cross-examining children (Myers, 1987) demonstrates that in the courtroom suggestibility is a real issue. Myers (1987) provides a number of examples of how children can be confused and misled by a defense attorney in order to cast doubt on the victim's testimony. For example, he suggests confusing the child by asking questions following more than one train of thought at a time and changing the temporal order of the events.

The recent rapid development of our awareness of the extent of child abuse has led to a corresponding rapid increase in the number of cases in which children provide evidence in family, civil, and criminal courts. The presence of children in the courtroom has raised a series of issues that have led to judicial and

legislative changes in both Canada and the United States. One issue reflects the formality of the courtroom and the ability of children to deal with such a complex and problematic context. A related issue is the problem of the child providing evidence while in the presence of the person who did the abuse. These problems have led to a variety of responses that are exemplified in recent Canadian legislation, Bill C-15. This bill provided a series of amendments to the Canadian Criminal Code and to the Canada Evidence Act and became law in January 1988. The bill is concerned with child sexual abuse, and among its provisions are three changes with respect to children's evidence in criminal court:

1. A screen may be placed between the child and the accused during the child's testimony so that the child does not have to look at the defendant.
2. The child may provide his or her evidence via a live closed-circuit video hookup between the court and a separate room in which the child remains.
3. A videotape of an interview of the child may be admitted as evidence to supplement the child's courtroom testimony if the child adopts the tape and if the tape was made within a reasonable time of the commission of the offense.

Similar reforms have been considered in a number of states in the United States. These changes represent major modifications in court procedures and have been instituted without sufficient research to justify them (e.g., Robb & Kordyban, 1988). Melton (1985) has suggested that the courts should admit children's evidence but otherwise not change court procedures until research or court experience provides justification for the changes.

One point to note about the Canadian legislation is that it contained a research component that has generated a number of projects to date and will include an evaluation of the impact of the legislation in 1990s. Examples of the completed projects include a review of the social science and legal literature concerning children and the law (Yuille, King, & MacDougall, 1988) and a set of 27 projects sponsored by the Department of Health and Welfare that have summarized the existing state of knowledge in virtually every aspect of child sexual abuse.

Expert Evidence

Experts have been called to provide evidence in child sexual abuse cases ranging from statistics on the rates of abuse to the credibility of the child's allegations (Whitcomb, Shapiro, & Stellwagen, 1985). The reaction of the courts to the admissibility of expert evidence has been mixed, with the type of evidence led being the primary determinant of the court's reaction. Serrato (1988) has proposed a "spectrum" to interpret the U.S. cases in terms of the admissibility of expert testimony. The scale ranges from testimony with low to high impact on the ultimate issue. Low-impact testimony is represented by attempts to have experts testify about the general characteristics of sexually abused children. The high-impact testimony includes instances in which an expert is asked to provide

evidence about profiles of offenders or about the credibility of the child. Serrato (1988) reports that the low-impact expert testimony is generally admitted by the courts and the high-impact testimony is not. Roe (1985) summarized this state of affairs: "In sum, the solicitation of the expert's opinion on credibility or truthfulness of the victim does not seem legally sound or practically wise" (p. 297).

Roe's (1985) review of the U.S. case law also confirmed the admissibility of low-impact expert evidence: "It appears well settled and a safe course of action for prosecutors in most states to introduce expert testimony explaining the reasons for delays in reporting, recantations, and, probably, inconsistencies in statements" (p. 299).

The Canadian situation has developed in a different fashion. Canadian courts have shown greater latitude in the type of expert evidence admitted in child sexual abuse cases. Expert evidence concerning the credibility of a child's allegations has been admitted (*Regina v. Sanderson*) although the admissibility of this type of evidence will remain an open issue until it reaches the Supreme Court of Canada.

While there is a paucity of adult eyewitness literature, psychologists have done a great deal of direct research on the victims of child sexual abuse. However, the research is relatively recent, and thus it will be some time before the pattern of results is adequately understood. For example, an expert might be asked to testify about the symptoms displayed by sexually abused children. While some generalizations are possible in this regard, the variability in children's response is considerable. Conte and Berliner (1987) reported that 20% of a sample of abused children were asymptomatic during their initial evaluation. The well-informed expert, however, can present viable research findings, while at the same time acquainting the court with the limitations of the research.

Fact Finding in Child Sexual Abuse Cases

The appropriate type of expert evidence and the problems children have with the courtroom context both reflect the fact that the adversarial system is inappropriate for dealing with intrafamilial child sexual abuse. Many aspects of the system only add to the abuse of the child who discloses sexual abuse. Maddock (1988), in a review of incest treatment, concluded: "No matter how appropriately and carefully . . . treated in the aftermath of reporting, the incest victim is certain to behave in at least some victimlike ways that will hamper the process of investigation, prosecution, and even treatment" (p. 215).

One only needs to witness a single instance of the cross examination of a child witness to realize that the procedure is ill suited to children. It is easy to confuse a young child with the use of age-inappropriate language, long and circuitous questions, and a confrontational style. The adversarial system creates as many problems as it solves in the area of child sexual abuse.

Many jurisdictions in Europe rely on an inquisitorial judicial system that permits the presentation of evidence the adversarial system will not. One example is expert evidence concerning the credibility of a child's evidence. For example,

since 1954 it has been routine for German courts to admit expert evidence on the credibility of a child's statement (cf. Undeutsch, in press). As a result, German psychologists have interviewed and assessed such credibility in tens of thousands of cases over several decades (cf. Wegener, in press). A systematic procedure has emerged from this work that appears effective in discriminating credible from noncredible statements (e.g., Raskin & Yuille, in press; Steller & Koehnken, in press; Yuille, 1988). The procedure has been supported by both field experience and research (cf. Steller, in press).

If expertise in assessing the credibility of a child's evidence proves reliable and valid, the courts will have to deal with the admissibility of such evidence. The U.S. courts appear unlikely to permit expert evidence that bears directly on the ultimate issue. However, the Canadian courts have already admitted such testimony (e.g., *Regina v. Sanderson*).

Expert testimony on the credibility of a child's evidence will be problematic for the criminal courts, but both civil and family courts in Canada and the United States routinely admit such evidence. There are many unresolved issues concerning how we can provide an environment that will help the child to testify, provide appropriate expert testimony, and protect the rights of the accused. This area of expert testimony is just emerging. Some of the issues are now clarified, but their resolution remains obscure.

In a newly emerging and rapidly expanding arena such as that involving child sexual abuse, a real problem for the courts is deciding who qualifies as an expert. The child sexual abuse area has witnessed a spate of instant experts. Psychologists have claimed that they can diagnose abuse from the drawings of children or the way they play with dolls. Such claims are made without any research foundation. There is an extensive research literature in this area, and the court needs to have grounds to determine which "expert" knows this literature and which "expert" does not.

Expert Evidence Based on Clinical Assessments

As noted at the beginning of this article, providing evidence based on clinical assessments of the accused is the most common reason for a psychologist to appear in court. The result has been the development of a subdiscipline of forensic psychological assessment (e.g., Grisso, 1987; Melton, Petrila, Poythress, & Slobogin, 1987). The improvements in multivariate methodology and test development sophistication have resulted in the availability of a wide variety of reliable and valid tests that can be employed for forensic purposes. There is little difficulty or controversy associated with the admissibility of such test results or of clinical opinions with respect to the assessments of an individual's current mental status. For example, in the domain of determining the fitness of an accused to stand trial, the court routinely employs expert psychological evidence. (For a review, see Roesch & Golding, 1987.)

There are some areas of expert testimony that are, however, much more controversial. Psychologists are frequently asked to infer a person's psychological

state at a time different than the assessment. These inferences take one of two forms: (a) an attempt to determine a defendant's state of mind in the past, at the time of the commission of the crime (For a review, see Golding & Roesch, 1987.); and (b) an attempt to predict future behavior, for example, how dangerous a convicted man will be in the future. (For a review, see Litwack & Schlesinger, 1987.) Some psychologists believe that these types of inferences can be done; however, others suggest that the task of inferring the state of mind of a person at another time is virtually impossible. The debate about the validity of psychological inferences heated up recently with the publication of an article in the July 1988 issue of *Science* (Faust & Ziskin, 1988). This article contains the results of an analysis of the published literature (some 1400 studies) dealing with the reliability and validity of clinical assessments. The authors provided the following conclusion:

We began by asking whether expert witnesses achieve reasonable certainty and aid the trier of fact. The scientific evidence clearly suggests that clinicians fail to satisfy either legal standard for expertise. Clinicians frequently cannot agree on psychiatric diagnoses of current states, much less provide trustworthy answers to less familiar and more difficult forensic questions, which often demand projections backward or forward in time. Considerable research also shows that clinicians' judgmental accuracy does not surpass that of laypersons. (p. 241)

The American Psychological Association (APA) responded to the Faust and Ziskin (1988) article (reported by Bales, 1988). The APA indicated that the conclusions of Faust and Ziskin were "overly narrow" and suggested that clinicians do have expertise to offer the courts. The report of the APA response was too brief to permit an evaluation of the counterarguments to the Faust and Ziskin paper. At present, the empirical foundation of Faust and Ziskin's conclusions is uncontested.

SUMMARY AND CONCLUSIONS

Expert testimony by psychologists can be useful to civil, family, and criminal courts. The courts often lack knowledge that would be of assistance in dealing with a variety of issues; for example, patterns of psychotic reactions, the typical pattern of disclosure of sexual abuse by children, and proper procedures for conducting a lineup. In these and related areas, psychologists have information that can be of use to the trier of fact. However, there are some very real problems associated with expert psychological evidence. Some psychologists have claimed knowledge that they do not have, the area of eyewitness testimony being a good example. Some psychologists have offered expert evidence for which there is no research foundation, for example, in clinical assessments conducted for the insanity plea or claims that the sexual abuse of a child can be determined by examining the symbols found in the drawings of the child. Providing expert

evidence for which there is no firm research foundation can only damage the discipline of psychology and its relationship with the courts.

What is needed is an effective filter so that the useful information gets to the courts and the premature and inappropriate information does not. The basic need is to develop systemic changes that can minimize the likelihood of inappropriate expert testimony. There are two interdependent changes that would improve the quality of the expert testimony of psychologists: (a) more professional concern, and (b) educating the judiciary. Professional associations need to devote more attention to the ethical issues that have developed around the testimonial problems outlined in this article. Although the issues are complex and thorny, they must be addressed in order to establish clear professional guidelines for the requisite foundations of expert opinion. Such guidelines could also serve as the basis for providing information to the judiciary about psychological expert evidence. Judges could be informed of the qualifications required by the association for a person to claim expertise in a particular field. In addition, the judges could be acquainted with the areas of evidence that the association believes have reached a level of reliability and validity to be of use to the courts.

Psychologists have much to offer in the forensic context, and the future promise for our contributions is considerable. It is regrettable that we have compromised our credibility through being too eager to enter the court. We need to discourage strongly the court presentation of premature and ill-supported ideas; our relationship with the courts can only improve as a consequence.

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